

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

UNITED STATES OF AMERICA,)
)
Plaintiff(s),)
)
vs.) 2:10-cr-121-RLH-RJJ
)
BRETT DEPUE,) MINUTES OF THE COURT
)
Defendant(s).) February 14, 2012
)

THE HONORABLE ROGER L. HUNT UNITED STATES DISTRICT JUDGE
COURTROOM ADMINISTRATOR KANDY CAPOZZI COURT REPORTER HEATHER NEWMAN
COUNSEL FOR PLAINTIFF(S) BRIAN PUGH; SARAH GRISWOLD
COUNSEL FOR DEFENDANT(S) BRETT DEPUE (pro se); MACE YAMPOLSKY (standby)

MINUTES OF PROCEEDINGS: **JURY TRIAL (Day Seven)**

The Court convenes at 8:43 a.m. Defendant is present. FBI agent Steven Konrad is present with the Government.

Ms. Griswold calls **LENKA LILLEBERG** to the stand. The witness is sworn, examined and excused.

Ms. Griswold calls **REBECCA McKENNA** to the stand. The witness is sworn, examined, cross-examined and excused. Government's exhibits 36F, 36A, 36B, 36C and 36D are marked and admitted into evidence.

Ms. Griswold calls FBI Agent **STEVEN KONRAD** to the stand. The witness is sworn and examination commences.

The Court recesses from 10:01 a.m. to 10:16 a.m.

OUTSIDE THE PRESENCE OF THE JURY: Mr. Yampolsky, on Mr. Depue's behalf, requests Mr. Depue's testimony not commence until after the noon break. Additionally, Mr. Yampolsky inquires if he will be permitted to object during the Government's cross-examination of the Defendant.

Mr. Depue affirms he is in agreement with those requests.

Accordingly, Mr. Depue's testimony will be after the noon break and Mr. Yampolsky will be permitted to raise objections during the cross-examination.

The jury enters at 10:19 a.m.

The examination of **Agent Konrad** concludes. Following cross-examination and redirect examination, the witness is excused.

THE GOVERNMENT RESTS.

The jury is admonished and excused from 10:45 a.m. until 12:00 p.m.

The Court reconvenes at 12:02 p.m.

OUTSIDE THE PRESENCE OF THE JURY:

Mr. Pugh objects to certain exhibits the Defendant proposed to use. Mr. Depue responds. The Court will not permit those exhibits for the reasons stated on the record.

Mr. Pugh requests the Court give an instruction prior to Defendant's testimony which states that a defendant's belief that victims of the fraud will be paid in the future or will sustain no economic loss if not a defense to the crime.

Mr. Depue objects to the instruction being given prior to his testimony.

The Court will modify the instruction to add it is not a defense of "fraud or conspiracy to commit fraud" and will give the instruction after direct testimony. The Court will consider including it in the final instructions.

Mr. Depue is canvassed by the Court regarding his right to testify in his own behalf or not to testify. The Defendant affirms that he understands his rights and that it is his voluntary decision to testify.

The jury enters at 12:20 p.m.

The defense calls **BRETT DEPUE** to the stand. The Defendant is sworn and Mr. Yampolsky is permitted to assist by asking the Defendant the questions he wished asked.

The Court gives the requested instruction, as modified. Mr. Pugh cross-examines the Defendant. Following further examination on redirect, the Defendant is excused.

THE DEFENSE RESTS.

AT SIDEBAR: Mr. Pugh advises that the Government will be calling a

rebuttal witness if that witness can be available tomorrow morning.

The Court explains tomorrow's proceedings to the jury and that the Court will now meet with counsel and Mr. Depue to finalize the jury instructions.

IT IS HEREBY ORDERED the trial in this matter shall continue WEDNESDAY, FEBRUARY 15, 2012 at 8:30 a.m.

The jury is admonished and excused at 1:33 p.m.

The Court, counsel and Defendant retire to chambers to settle jury instructions.

The Court reconvenes at 2:57 p.m.

OUTSIDE THE PRESENCE OF THE JURY: Jury instructions are settled on the record. Mr. Depue objects to Instruction 23. The objection is overruled for the reasons stated on the record. There are no other objections to instructions that will be given nor to the Court's refusal to give any instruction.

The Court proposes to read the instructions prior to closing arguments. The parties are in agreement with the Court's proposal.

The Court adjourns at 3:00 p.m.

LANCE S. WILSON, CLERK
U.S. DISTRICT COURT

BY: /s/ Kandy Capozzi
Courtroom Administrator